



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.10.2020

Pronounced on: 22.10.2020

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CORAM:

The HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.1585 of 2016
and C.M.A.No.1714 of 2016
& C.M.P.No.12966 of 2016

1. Senniammal,
W/o.Late Dakshinamoorthy,
 2. Minor Sharmila,
D/o.Late. Dakshinamoorthy,
 3. Minor Dhanu Surya,
S/o.Late. Dakshinamoorthy,
Minors 2 & 3 are rep. by their Guardian/
Mother Senniammal.
 4. R.Krishnasamy,
S/o.Ramasamy Gounder,
- ... Appellants/Petitioners
in C.M.A.No.1585 of 2016

/versus/

1. Sarugammal,
W/o.Nagappan.
 2. The National Insurance Company Ltd.,
Rep. by its Branch Manager,
Raja Street, Gobichettipalayam Town,
Gobichettipalayam Taluk, Erode District.
- ... Respondents/Respondents
in C.M.A.No.1585 of 2016

National Insurance Company Limited,
Representing by its Manager,
Raja Street, Gobichettipalayam Taluk,
Erode District.

...Appellant/2nd Respondent
in C.M.A.No.1714 of 2016

/versus/

1. Senniammal,
W/o. Late Dakshinamoorthy.



2. Minor Sharmila,
Daughter of Dhakshinamoorthy,

3. Minor Dhanu Surya,
S/o.Late. Dakshinamoorthy,
Minors 2 & 3 are rep. by their Guardian/
Mother Senniammal as next friend and natural guardian

... Respondents/Petitioners

4. R.Krishnasamy,
S/o.Ramasamy Gounder.

5. Sarugammal,
W/o.Nagappan.

...5thRespondent/1st Respondent
in C.M.A.No.1714 of 2016

Prayer in C.M.A.No.1585 of 2016: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.11.2014 made in M.C.O.P.No.364 of 2013 on the file of MACT/Sub Court, Gobichettipalayam.

Prayer in C.M.A.No.1714 of 2016: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.11.2014 made in M.C.O.P.No.364 of 2013 on the file of Motor Accidents Claims Tribunal/Subordinate Court, Gobichettipalayam.

For Appellant : Mr.Ma.P.Thangavel
in C.M.A.No.1585 of 2016

For R2 : Mrs.N.B.Surekha
in C.M.A.No.1585 of 2016

For R1 : exparte
in C.M.A.No.1585 of 2016

For Appellant : Mrs.N.B.Surekha
in C.M.A.No.1714 of 2016

For R1 to R4 : Mr.Lokesh,
in C.M.A.No.1714 of 2016 for Mr.Ma.P.Thangavel

For R5 : exparte
in C.M.A.No.1714 of 2016



COMMON JUDGMENT

(The case has been heard through video conference)

These two appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award passed by the Motor Accident Claims Tribunal, Gobichettapalayam, in M.C.O.P.No.364 of 2013.

2. C.M.P.No.1714 of 2016 is filed by the Insurance Company aggrieved by fixing the liability upon the Insurance Company, claiming that the tractor insured under them was not the vehicle involved in the accident and fixation of compensation for a sum of Rs.8,91,000/- is without any justification.

3. C.M.A.No.1585 of 2016 is filed by the claimants for enhancement of compensation being not satisfied with the quantum of compensation under loss of income and other non-conventional heads.

4. The short facts of the case is that the deceased Dhakshinamoorthy on 05.05.2012, while riding his two wheeler Hero Hondo bearing Registration No.TN-36-Y-8603 on the Ukkaram to Sathy main road near Periyar nagar Bus stop, a tractor without registration number attached with trailer bearing registration No.TN-36-Y-7830 driven by one Balusamy came rash and negligent manner from opposite direction and hit the two wheeler. Dhakshinamoorthy the two wheeler rider died on the spot. The case was registered against Balusamy by Kadathur Police Station in Crime No.112 of 2012.

5. At the time of accident, the deceased Dhakshinamoorthy was 40 years old having six acres of land and poultry farm, earning a sum of Rs.20,000/- per month. His wife, minor son, minor daughter and his father were his dependants. The owner of the tractor is N.Subburaj, the vehicle is duly insured under the National Insurance Company. The said N.Subburaj died leaving his mother Sarugammal as sole Legal heir. Therefore, Sarugammal being the ostensible owner of the vehicle and the insurer of the said vehicle are jointly and severally liable to compensate the loss. Hence, claim of Rs.30,00,000/- sought.

6. The Insurance Company filed counter, wherein, the petition claiming damages against them was stoutly denied on the ground that in the F.I.R, the tractor number not mentioned and only the trailer number is given. Specifically in the F.I.R, it is stated that the tractor had no number plate. The trailer bearing registration No.TN-36-Y-7830 was not insured under the 2nd respondent/Insurance Company. Earlier, the petitioners filed M.C.O.P.No.204 of 2014 for the very same claim but same was not



pressed and dismissed on 18.12.2013. Without seeking liberty to file fresh petition on the same cause of action, the present petition is filed hence it is not maintainable. The compensation claimed is very exorbitant. The Tractor bearing registration No.TN-36-X-0189 is exempted from road tax since it is to be used in the field for agricultural purposes only. Contrary to policy condition and permit condition the vehicle involved in the accident was transporting mud and stones at the time of accident, without number plate and attached to the trailer bearing registration No.TN-36-Y-7830. Therefore, the Insurance Company is not liable for paying any compensation to the claimants.

7. The Tribunal, on relying upon the evidence of P.W.1, who is the father of the deceased but not an eye witness to the accident, had accepted that the vehicle involved in the accident is the tractor bearing registration No.TN-36-X-0189 attached to a Trailer and accident has occurred due to rash and negligently driving of the tractor driver.

8. Based on the final report filed by the police, the Tribunal has fixed the tractor bearing registration No.TN-36-X-0189 is the offending vehicle and by disbelieving the evidence of R.W.2, who has deposed that the said tractor was not involved in the accident. After considering the title documents for the agricultural land and the statement of accounts regarding the poultry farm, the Tribunal has fixed a sum of Rs.4,500/- as monthly income of the deceased and deducted 1/3rd towards his personal expenditure. It has applied multiplier 16 to arrive the compensation towards the loss of earning. In addition a sum of Rs.2,15,000/- was awarded under other non-conventional heads,

9. The compensation awarded under various heads is under:-

Sl. Nos.	Compensation under Various Heads	Award passed by the Tribunal
1.	Loss of earnings	Rs.5,76,000/-
2.	Transport to Hospital	Rs.5,000/-
3.	Funeral Expenses	Rs.10,000/-
4.	Loss of Love and Affection	Rs.2,00,000/-
5.	Loss of consortium	Rs.1,00,000/-
	Total	Rs.8,91,000/-

10. The Tribunal directed the Insurance Company to pay the award amount of Rs.8,91,000/- with 7.5% interest from the date



of petition till the date of realisation and granted liberty to recover the same from the owner of the vehicle. The said award is challenged herein through two different appeals by the claimant as well as the insurer.

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11. Heard the Learned Counsel and records perused.

12. The perusal of the impugned award, this Court finds that the tribunal at paragraph Nos.11 & 12 of its order has reasoned out for fixing the responsibility on the insurer to pay and then to recover from the owner of the vehicle. The Tribunal, based on Ex.P-2, the final report filed by the police in connection with the accident has held that, Balusamy the driver of the tractor loaded with mud and stones had driven the tractor without the registration number.

13. The MVI reports Ex.P.5 and Ex.P.6 indicates that the damages sustained by the two wheeler and the Tractor. The oral evidence of P.W-1 and P.W-2 implicate the tractor owned by Subbaraj S/o.Napappan, who died subsequent to the accident and his mother Sarugammal is the sole legal heir of Subbaraj. The contra evidence given by R.W-2 denying the usage of tractor bearing registration No.TN-36-X-0189 for transporting mud and stones, for his construction company not considered as a conclusive proof by the tribunal.

14. Regarding the earning capacity of the deceased, the Tribunal not much convinced with the title documents Ex.P.12 to Ex.P.17 showing the earning capacity of the deceased and Ex.P.11 the statement of accounts maintained by Suguna Foods Limited, Coimbatore. The Tribunal had notationally fixed the earning of the deceased at Rs.4,500/-p.m and after deducting 1/3rd for his personal expenses, applied the multiplier 16, taking into the age of the deceased as 40 years.

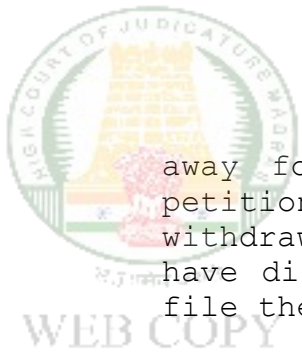
15. The F.I.R (Ex.P.1), Charge Sheet (Ex.P.2), Insurance Policy (Ex.R.1) are considered for the purpose of fixing liability. Ex.P.18 and Ex.P.19 the certified copy of the order passed by M.A.C.T, Gobichettiapalayam in M.C.O.P.No.204 of 2012, is taken note to decide the maintainability of the second claim petition. Ex.P.11 to Ex.P.17 is considered for computing the earning capacity. In the light of these documents and the oral evidence of the witnesses, this Court holds that the award requires re-appreciation.



16. Ex.P.1, the F.I.R came to be registered 05.05.2002, at about 6.00p.m, within two hours from the accident, based on the information given by one Shanmugam, a relative of the deceased. The driver of the tractor is identified as Balusamy and in the F.I.R it is specifically mentioned that the tractor had no registration number plate. The Trailer attached to the said Tractor was bearing registration No.TN-36-Y-7830. The police, after investigation had found that the registration number of the offending tractor is TN-36-X-0189. The Final report Ex.P.2, against Balusamy filed for offences under section 279, 304 (A) I.P.C., Section 97 r/w 177 and 39 r/w 177 of Motor Vehicle Act. In the final report, the police has stated that, the accident occurred when Balusamy driving the tractor bearing Reg.No.TN-36-X-0189 without number plate attached with the trailer bearing Reg.No.TN-36-Y-7830. As per MVI report, Ex.P.6 dated 08.05.2012, the front right wheel mudguard bend noted in the tractor.

17. Ex.R.1, is the insurance policy for the tractor bearing registration No.TN-36-X-0189. The insured name is Subbaraj. The coverage limitation as to use for agricultural purpose only. The premium of Rs.1,933.75 for the tractor, Rs.930/- for the trailer and Rs.25.00 under WC to 1 employee, net premium Rs.3,450/- is paid exclusive of taxes. The period of coverage is between 04.06.2011 and 03.06.2012 midnight. The accident occurred on 05.05.2012. In the insurance policy though premium is collected for trailer also, the Trailer Registration number is not given. The registration number of the tractor is given for the trailer with chassis number. It is the fault of the Insurance Company and not the insurer. Therefore, on this score the Insurance Company cannot deny their liability.

18. As far as the issue of maintainability, the earlier claim petition M.C.O.P.No.204 of 2012 filed by the claimants. From Ex.P.18 and Ex.P.19, we find that, the said claim petition was filed against Subburaj as owner of the Tractor and The National Insurance Company Limited, Gobichettipalayam as insurer. After coming to know that the owner of the offending vehicle died after the accident (05.05.2012) and before filing of the claim petition (23.07.2012). Since the claim cannot sustain against a dead person, they claimants have withdrawn the claim petition, no doubt without obtaining leave or liberty for filing fresh petition. In view of the facts and circumstances, the earlier claim petition dismissed at request cannot stand in the way of the claimants to file fresh claim petition against the owner and the insurer in the instant case. The earlier claim was withdrawn before commencement of Trial and no order was passed on merit. The right to seek compensation cannot be taken



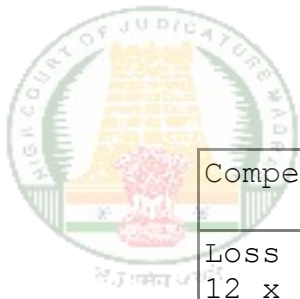
away for the reason of the withdrawal of the earlier claim petition without leave to file fresh petition. The reason for withdrawal is clear and in the claim petition, the claimants have disclosed the death of the vehicle owner and the reason to file the claim petition against the ostensible owner.

19. The decision of the Tribunal that the claim petition is maintainable against the respondents is based on evidence and this Court finds no infirmity in the said findings. Also the order of "pay and recovery" is perfectly in tune with the law and evidence. Therefore, the appeal by the Insurance Company denying privity is liable to be dismissed.

20. In respect of quantum of compensation, this Court finds that, the Tribunal has taken the fundamental income of the deceased as Rs.4,500/- and after deduction $1/3^{\text{rd}}$ for his personal expenses, applied multiplicand 16 taking into consideration of his age as 40 years. From Ex.P-12 to Ex.P-17, we find that, the deceased had purchased agricultural lands between 2007 to 2011. Except the title deeds, there are no documentary evidence to prove the deceased had any income. Ex.P.12, the statement of accounts is from the Suguna Foods Limited (formerly Suguna Poultry Farm Limited) for Venus Broilers, Gopichettipalayam. How this Venus Broilers is connected to the deceased is not explained by the claimants with necessary documents. Therefore, from the available evidence, the Tribunal has tentatively fixed the monthly income of the deceased at Rs.4,500/-. The Tribunal, though right in fixing the tentative income as Rs.4,500/-, has not considered the future prospect of the 40 years old deceased and the multiplier for 40 years has been wrongly taken as 16 instead of 15 as laid down by the Supreme Court in Sarala Verma's case and reaffirmed in Pranay Sethi case.

21. In view of the Constitutional Bench judgment rendered in National Insurance Co.Ltd., Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), the formula standardised by the Supreme Court has to be applied in this case to arrive at just compensation for the death of Dakshinamoorthy, aged 40 years.

22. Accordingly, the award of the Tribunal is modified and enhanced as below:-



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Compensation under Various Heads	Award passed by this Court
Loss of earning $(4500 + 1800) \times 15 \times 12 \times \frac{2}{3}$	Rs.7,56,000/-
Loss of spousal consortium for the 1 st Claimant:	Rs.40,000/-
Loss of love and affection 2 nd and 3 rd Claimants	Rs.80,000/-
Loss of love and affection for 4 th claimant	Rs.20,000/-
Loss of Estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Total:	Rs.9,21,000/-

23. The award passed by the Tribunal for a sum of Rs.8,91,000/- is enhanced to Rs.9,21,000/- with 7.5% from the date of numbering the petition (18.11.2013) till the date of realisation. The appellant/2nd respondent is directed to deposit the award amount with interest @ 7.5%, within a period of 12 weeks, from the date of receipt of the award. After payment, the appellant is permitted to recover the same from the owner of the vehicle.

24. The Learned Counsel appearing for the appellant has stated that pursuant to the interim order passed by this Court, the award amount has been deposited into the credit of MCOP Account and from out of that, the claimants have already withdrawn 50%. If it is so, the appellant herein is directed to deposit the enhanced amount as per the modified award, less the amount already deposited.

25. The claimants shall apportion the award with proportionate interest as below:-

The first claimant (wife)	Rs.3,00,000/-
2 nd and 3 rd Claimants (minor children)	Rs.2,75,000/- each.
Fourth claimant (father):	Rs.71,000/-

26. The shares of the minor claimants 2nd and 3rd shall be invested in fixed deposit in any of the Nationalised Bank till they attain majority. The interest for the said deposit shall be



drawn once in six months by the 1st claimant's mother and utilise it for their welfare of minor children.

27. Accordingly, the Civil Miscellaneous Appeal No.1714/2016 dismissed. and Civil Miscellaneous Appeal No.1585 of 2016 is Partly Allowed, with costs payable to the claimants. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To:

1. The Motor Accidents Claims Tribunal/
Subordinate Court,
Gobichettipalayam.
2. The Section Officer,
V.R.Section,
High Court, Madras.

Delivery common Judgment in
C.M.A.No.1585 of 2016
and C.M.A.No.1714 of 2016
& C.M.P.No.12966 of 2016

LN (CO)
K.RK. (27.10.2021)